whatsoever and that the application would have been approved any way.

Now the question of *mens rea*. I need only say that *mens rea* is necessary in every criminal offence save those which the legislature thought fit to expressly exclude. But *mens rea* can be proved in diverse ways. Here *mens rea* is proved if the accused knew or ought to have known of the conflict between his public duty as member of the Exco and his private interest in the approval of the application.

In my opinion there can be no question of the accused or anyone else present at that Exco meeting not being aware of the irregularity. The accused is a highly educated person. Many among his former colleagues who said that they saw "nothing irregular or unethical" were people of high status and position and therefore cannot by any standard be considered naive. I do not think these gentlemen really believed in what they said. The approving authority for the alienation of State land in the State is the Exco. The application before the Exco was to his personal benefit. Even a child would know the conflict of interests involved.

The aim of Ordinance 22 is to bring to book renegade politicians and public servants who abuse their public positions for private gains. I agree that there are extenuating circumstances in this case. It is true that the accused was among those eligible to apply and to be given State land from the area earmarked for alienation to the three categories of people mentioned earlier in the judgment. I also agree that unlike in *Haji Abdul Ghani bin Ishak* the accused in this case was silent when the Chairman tabled his application for the land which proceeding could not have taken more than a couple of minutes before the decision to approve was made by the Exco. But an offence has nevertheless been committed. On the facts I can come to no other conclusion but that the accused took part in making the decision which benefited him personally and that in essence is the very thing which Ordinance 22 prohibits.

I accordingly find the accused guilty of the offence as charged.

CONVICTION AND SENTENCE

As the offence is serious a conviction shall be recorded. But having regard to the extenuating circumstances referred to earlier in the judgment a token custodial sentence and a fine would be adequate and fair.

Convicted. Sentence – 1 day imprisonment and fine of $2,000 in default, 6 months.

Order accordingly.

Solicitors : *Joseph & Son.*

PERTUBOHAN BERITA NASIONAL MALAYSIA v. STEPHEN KALONG NINGKAN

[A.C.J. (Tan Chiaw Thong J.) August 4, 1982]
[Kuala Lumpur – Federal Court Civil Appeal No. 224 of 1980]

Practice & Procedure – Costs – Taxation – R.F.C. 1980, r. 62(6) – R.H.C. 1980, 0.59 rr. 30(2)(a) & 31(2)(a).

The respondent applied for an order to review the taxation by the Deputy Registrar of items 26, 29 and 43 in the Bill of Costs of the appellant. Item 26 relates to attendance to obtain the consent of the respondent's advocates for Draft Index and Order, for which the sum of $7.50 was claimed under item 58 of the Scale of Costs under Appendix I to 0.59; Item 29 relates to drafting grounds for the Memorandum of Appeal for which the sum of $200 was claimed under item 6(c); and item 43 relates to the attendance to obtain the consent of the respondent's advocates for Draft Index for which the sum of $7.50 was claimed under item 58.

In the course of argument, the respondent withdrew objection to the taxation of item 26.

The Deputy Registrar in reviewing his decision held that as to item 29, the $150.00 allowed during taxation was reasonable and fair on the basis that an appeal to the Federal Court was a special case within the ambit of 0.59 r.31(2).

Held: (1) Item 29 in the appellant's Bill of Costs falls under item 75 of the Scale of Costs. It does not appear to be a "special case" within the ambit of 0.59 r. 31(2)(a). By the mention of 0.59 rr.28 and 30(2), and having regard to the nature of the matters on what, in their respective contexts, may be regarded as special, in contradistinction with general subjects, the "other special cases" must necessarily relate to cases which are also special in their nature. In this context, an appeal to the Federal Court is not considered a "special case" within the meaning of 0.59 r.30(2)(a);

(2) as to item 43, in order to obtain consent of the respondent's advocates for the Draft Index, it was not necessary that attendance be made on them. Item 43 of the appellant's Bill of Costs should therefore be disallowed.

Cases referred to:–

(1) *Tillmanns & Co.* v. *S.S. Knutsford* [1908] 2 K.B. 385, 403; affirmed [1908] A.C. 406.

(2) *Provost etc. of Glasgow* v. *Glasgow Tramway Co.* [1898] A.C. 631, 634.

SUMMONS-IN-CHAMBERS.

John Ko for the appellant.

T.O. Thomas for the respondent.

Cur. Adv. Vult.

Tan Chiaw Thong J: By this Summons in Chambers, the Respondent applies for an order to review the taxation by the Deputy Registrar of items 26, 29 and 43 in the Bill of Costs of the Appellant. The items mentioned relate respectively to (a) attendance to obtain the consent of Respondent's advocates for Draft Index and Order, for which the sum of $7.50 was claimed under item 58 of the Scale of Costs under Appendix 1 to Order 59 (hereinafter called "the Scale of Costs"); (b) drafting grounds for the Memorandum of Appeal, for which the sum of $200.00 was claimed under item 6(c); and (c) attendance to obtain the consent of Respondent's advocates for Draft Index, for which the sum of $7.50 was claimed under item 58.

In the course of argument, learned counsel for the Respondent withdrew objection to the taxation under item (a) above.

As to item (b), the Deputy Registrar, in reviewing his decision, held that the $150.00 allowed during taxation was reasonable and fair, on the basis that an appeal to the Federal Court was a special case within the ambit of Order 59, rule 31(2). The question for consideration is whether this basis is correct; and if not, what should be the correct basis on which to ground the taxation. Before the Deputy Registrar, learned counsel for the Appellant pointed out that item 6(c) of the Scale of Costs was relied upon as a guide or analogy, and put forward the argument, which was accepted, that an appeal to the Federal Court is a special case within the meaning of Order 59, rule 31(2). Learned counsel for the Respondent, on the other hand disputed this, and argued that there was no provision in the Scale of Costs for drafting a Memorandum of Appeal. Before this court, learned counsel for the Respondent amplified his argument by submitting that the item claimed should be regarded as part of getting up under item 27 of the Scale of Costs; and that "other special cases" within the meaning of Order 59, rule 31(2), should be read *ejusdem generis* with the special cases mentioned in rule 28 or 30(2) of the same Order, which relate respectively to cases where costs are payable to an advocate by his own client, and costs payable to a trustee out of a trust fund.

It was pointed out that under the Scale of Costs under the old Rules, drafting of a memorandum of appeal was claimed and taxed under items 122 and 123, which related to the preparing of any necessary or proper document not otherwise provided for. In this connection, item 27 of the Scale of Costs, under Part IV thereof headed "Preparation for Trial or Hearing, whether in open court or otherwise," stipulates that for instructions for appeal from an interlocutory or final order or judgment, the amount allowable on taxation is discretionary. The note to that item and item 26, which is not relevant here, states *inter alia* that those two items are intended to cover the doing of any work, not otherwise provided for, necessarily or properly done in preparing for a trial, hearing or appeal, including taking instructions to appeal and considering the facts and law. In considering whether this item applies to the item claimed, two questions arise. Firstly, whether the item claimed is covered by the phrase "the doing of any work necessarily or properly done in preparing for an appeal"; and secondly, if so, whether that item is "not otherwise provided for" under the Scale of Costs. As to the first question, the words "any work" within the context of the phrase quoted would, in the absence of any words of limitation, appear to be sufficiently wide to include the drafting, or drawing up of a Memorandum of Appeal. In this connection, the commentary appearing in *Butterworth's Costs* (Third Edition) (Vol. 1), on the corresponding item 27 in Appendix 2 to R.C. Order 62, at Page 152, in that paragraph bearing the marginal note "Instructions to appeal," contains *inter alia*, the following: "The position since the January 1, 1960, is that an allowance is made for any work necessarily and properly done in connection with the work of preparing the appeal." Hence, the second question of whether the item claimed is "not otherwise provided for" under the Scale of Costs arises. As to this, it is noted that, under the heading "Drawing Documents", item 75 in the Scale of Costs provide for the drawing of "Minutes of order, accounts, statements, and other documents required for use in court or Chambers ..." In this connection, the corresponding item in the English Rules is item 77 in Appendix 2 to R.S.C. Order 62. The commentary to that item at Page A170 in *Butterworth's Costs* (4th Edition) (Vol 1), states that "This is

usually applied to the statement of facts as ordered by a Master in Chancery and takes the place of an affidavit. The object is to save costs ..." As to item 75, it is, in my view, pertinent to consider whether a Memorandum of Appeal may be regarded as coming within the ambit of "other documents" within the meaning of that item. In this connection, it is to be observed that certain documents, namely, "order, accounts, statements" are specifically mentioned therein. In view of their apparently dissimilar nature, it is not considered that "other documents" can properly be construed *ejusdem generis* with the words preceding them. In this connection, it is to be noted that "To invoke the application of the *ejusdem generis* rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or king of objects. Where this is lacking, the rule cannot apply, but the mention of a single species does not constitute a genus (see *Craies on Statute Law* (Seventh Edition) Page 181). "Unless you can find a category, there is no room for the application of the *ejusdem generis* doctrine (per Farwell, L.J. in *Tillmanns & Co.* v. *S.S. Knutsford*[1] and where words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words (per Halsbury L.C. in *Provost. etc. of Glasgow* v. *Glasgow Tramway Co.*[2]). Hence, I have come to the conclusion that "other documents", within the context of item 75, would include a memorandum of appeal which should accordingly be taxed under that item. In coming to this conclusion, I have not lost sight of the presence of the word "Minutes" in item 75 and the commentary in *Butterworth's Costs,* quoted above, which does not appear to be exhaustive in nature.

As stated, the Deputy Registrar in taxing the Appellant's Bill of Costs, based his decision on item 29 on the ground that it falls within the words "other special cases" in Order 59, rule 31(2). In view of my conclusion that item 29 in the Appellant's Bill of Costs falls under item 75 of the Scale of Costs, it cannot, in my opinion, be said that the requirement in sub-paragraph (a) has been satisfied, even if it is regarded that the item claimed is a "special case". However, I am of the view that the said item does not appear to be a "special case" within the ambit of rule 31(2)(a) for the following reasons. By the mention of rule 28. and 30(2), and having regard to the nature of the matters to which those rules relate, which deal with specific matters on what, in their respective contexts, may be regarded as special, in contradistinction with general subjects, the "other special cases", in my view, must necessarily relate to cases which are also special in their nature. In this context, it is not considered that an appeal to the Federal Court is a "special case" within the meaning of rule 30(2)(a).

In fairness to the Deputy Registrar, item 75 in the Scale of Costs was not brought to his attention at the taxation or review.

As to item 43, it is claimed under item 58 of the Scale of Costs, which relates to attendance on the solicitor (advocate) for the other party when necessary. The item claimed states that it is for "attendance to obtain consent of Respondent's advocates for Draft Index." The question arises as to whether, in order to obtain the consent of Respondent's advocates, for the Draft Index, it was necessary that attendance be made on them. In this connection, the relevant part of Rule 62(6) of the Rule of the Federal Court, 1980, reads: "A draft index of the documents to be included in the record of appeal shall be sent by the appellants solicitors to the solicitors for the respondents who or (if more than one) any of whom may within forty-eight hours object to the inclusion or exclusion of any document. In the event of the parties being unable to agree the matter shall be referred to the Registrar of the High Court who may require the parties to attend before a Judge of the said Court." It seems obvious, that, in relation to the item claimed, it is relevant to consider whether the word "sent" may be construed, in the context, to include "attendance". *Prima facie,* the answer seems to be in the negative. But learned counsel for the Appellants has emphasised that the purpose of sending the draft index is to obtain the approval of the advocates for the Respondent and that, in the same way that, in practice, attendance upon the advocates for the Respondent was made for the purpose of obtaining the latter's approval to a draft judgment or order under Order 42, rule 8, so was this practice adopted in relation to the item claimed. It was further pointed out that sending the draft index by post for approval is impracticable. I am not now concerned with Order 42, rule 8, since item 26 is no more in issue. As to the practice mentioned, it must, in my view, be sanctioned by the rules, or fall within the ambit of the word "sent" in Rule 62(6) of the 1980 Rules. Taking the word in its ordinary meaning – and I am not of the view that

to construe that word in any other way is justifiable in the circumstances without doing violence to the language used – it seems apparent that "sent" does not include "attendance". Whatever the difficulties of sending the draft index by post may be, I think they could be met by delivering the draft index by hand, and not necessarily by an advocate. The advocates for the respondents have forty-eight hours after service to raise their objections, if any, and if this is not done within the time limit, then I think that they may be taken to have no objection. Does delivery by hand entail "attendance" within the meaning of item 58? In my view, "attendance" must mean necessary and proper attendance. In this connection, it is not considered that, just handing over a document or documents to a person would mean that this constitutes "attendance" on him: a post-man does not attend upon a person when he delivers a letter to that person. As to the practice of obtaining the approval concerned after handing over the draft index, it may be a convenient practice, but the relevant rule in my view, does not require this, particularly in view of the time limit imposed. The practice mentioned does not, in my opinion, constitute a "necessary" attendance within the meaning of item 58 of the Scale of Costs. For the reasons given, item 43 of the Appellant's Bill of Costs should be disallowed.

Pursuant to Order 59, rule 36(5), I therefore order that the certificate of the Deputy Registrar dated February 8, 1982 be so amended as to accord with this judgment.

Order accordingly.

Solicitors: *Battenberg & Talma; T.O. Thomas*

PUBLIC PROSECUTOR v. YEE KIM SENG

[O.Cr. J. (Ajaib Singh J.) September 16, 1982]
[Ipoh – Criminal Trial No. 12 of 1980]

Criminal Law and Procedure – Mandatory death sentence for offence under Internal Security Act, 1960 – Whether unconstitutional – Deprivation of life or personal liberty in accordance with law – Provision of offences and penalties necessary in order to stop or prevent subversion – Equality before the law – Power of Attorney-General to decide under which law he would charge a person – Fact that court has no alternative does not make the mandatory death sentence unconstitutional – Federal Constitution, arts 5(1), 8(1), 12(1) & 149(1) – Internal Security Act, 1960, s. 57(1)(b).

Constitutional Law – Whether mandatory death sentence prescribed under Internal Security Act, 1960 unconstitutional – Federal Constitution, Articles 5(1), 8(1), 121(1) and 149(1).

In this case the accused had been charged for being in possession of a hand-grenade in a security area without lawful excuse and without lawful authority, an offence punishable with death under section 57(1)(b) of the Internal Security Act, 1960. Counsel for the accused raised a preliminary issue and submitted that the mandatory death sentence prescribed under section 57(1)(b) of the Internal Security Act 1960 is unconstitutional as it infringes articles 5(1), 8(1), 12(1) and 149(1) of the Federal Constitution.

Held: (1) article 5(1) of the Federal Constitution is not infringed because the accused is not going to be deprived of his life or personal liberty except in accordance with law, that is, the Internal Security Act, 1960,;

(2) Section 57(1)(b) of the Internal Security Act, 1960, does not contravene Article 149(1) of the Federal Constitution because to stop or prevent subversion it is necessary to provide for offences and penalties;

(3) the fundamental right of equality before the law and to the equal protection of law are not violated by the fact that the accused is charged under section 57(1)(b) of the Internal Security Act and not under section 8 of the Arms Act, 1960, as the Attorney-General has the power under the Constitution at his discretion to institute, conduct or discontinue criminal proceedings for any offence and it is up to the Attorney-General to decide if he would charge any person and under which law depending on the evidence available to him;

(4) the fact that the court has no alternative does not make the mandatory death sentence unconstitutional. The courts are concerned with the administration of the law and they are obliged to administer the law as found in the statute books.

Case referred to:

(1) *Ong Ah Chuan* v. *Public Prosecutor* [1981] 1 M.L.J. 64.

CRIMINAL TRIAL.

Mokhtar bin Ali (Deputy Public Prosecutor) for the Public Prosecutor.

Ngeow Yin Ngee for the accused.

Cur. Adv. Vult.

Ajaib Singh J.: The accused in this case is charged for being in possession of a hand-grenade in a security area without lawful excuse and without lawful authority which is an offence punishable with death under section 57(1)(b) of the Internal Security Act 1960. Mr. Ngeow Yin Ngee for the accused has raised a preliminary issue and submits that the mandatory death sentence prescribed under section 57(1)(b) of the Internal Security Act is unconstitutional as it infringes